

REMARKS

Reconsideration of this application, based on this amendment and these following remarks, is respectfully requested.

Claims 1 through 10 remain in this case. No claim is amended in this paper.

The sole basis of rejection in the Office Action of June 16, 2004 was a nonstatutory double patenting rejection of all of claims 1 through 10, as unpatentable over claims 1 through 13 of copending application S.N. 09/998,755, filed on the same day as this application. The Examiner asserted that the claims in this application are obvious variations of the claims in the copending application.

Applicants respectfully traverse the nonstatutory double patenting rejection, on the grounds that copending application S.N. 09/998,755 is not (yet) a patent. Indeed, the undersigned is aware that a first Office Action on the merits was only recently¹ mailed in copending application S.N. 09/988,755, and as such this copending application S.N. 09/998,755 does not stand allowed as of today. Accordingly, the nonstatutory double patenting rejection cannot apply, because the issuance of claims 1 through 10 from this application would not give rise to an unjustified extension of the rights previously granted in a patent. Indeed, it is not a certainty that any patent will ever issue from copending application S.N. 09/998,755, nor is it a certainty that a patent that does issue from copending application S.N. 09/998,755 will contain the claims that are currently in that application.

Applicants therefore respectfully submit that the nonstatutory double patenting rejection in this application is not ripe. The rejection is therefore respectfully traversed, and reconsideration is requested.

¹ On September 1, 2004.

The Examiner did not make the nonstatutory double patenting rejection in this case a provisional rejection.² Applicants submit that, assuming a nonstatutory double patenting situation to be present between claims 1 through 10 in this application and claims 1 through 13 in copending application S.N. 09/998,755, a provisional nonstatutory double patenting rejection would be appropriate. However, if the nonstatutory double patenting rejection were made provisional in this case, it is clear from the Office Action³ that this provisional nonstatutory double patenting rejection would be the only rejection remaining in this application. Because this application has a filing date no later than that of copending application S.N. 09/998,755, and has been examined ahead of copending application S.N. 09/998,755, Applicants therefore submit that the nonstatutory double patenting rejection, provisional or otherwise, should be withdrawn from this application.⁴

The prior art cited as pertinent but not applied⁵ in this application has been considered but is not felt to come within the scope of the claims in this case.

Applicants wish to bring the information listed on the enclosed PTO/SB/08A to the attention of the Patent and Trademark Office in connection with this application. The listed references were each cited in, and some of the listed references were applied against claims of, copending application S.N. 09/998,755 in an Office Action mailed September 1, 2004.

While this information is being cited after a first Office Action on the merits in this application, this information is being cited prior to a final action, allowance, or other close of prosecution of this application, and is accompanied by the fee set forth under 37 C.F.R. §1.17(p), by way of the enclosed Fee Transmittal. Applicants therefore submit that the citing of this information is timely.⁶

Copies of the references are enclosed. The references are in the English language. As such, no additional statement of relevance is provided in this paper.

² Office Action of June 16, 2004, page 2.

³ *Id.*

⁴ See *Manual of Patent Examining Procedure* (8th ed., Rev. 2, 2004), §804(I)(B), p. 800-19.

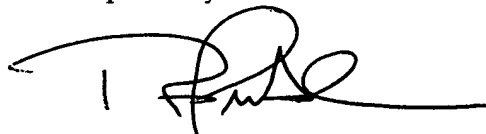
⁵ Office Action, *supra*, pages 2 through 4.

By citing these references, Applicants do not admit that any of these references is, or is considered to be, material to the patentability of any of the claims of this application.⁷

Consideration of this information in this application is respectfully requested.

For the reasons given above, Applicants respectfully submits that all claims now in this case are in condition for allowance. Reconsideration of this application is therefore respectfully requested.

Respectfully submitted,



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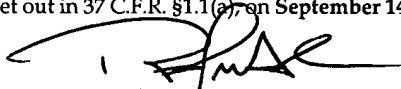
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CERTIFICATE OF MAILING

37 C.F.R. 1.8

The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, and addressed as set out in 37 C.F.R. §1.1(a), on September 14, 2004.



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⁶ 37 C.F.R. §1.97(c).

⁷ 37 C.F.R. §1.97(h).